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**Contract No. 7-07-20-W0045-LTR1**

**DRAFT**

**Exhibit Tracy-WestSideID – 04-01**

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Central Valley Project, California

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
AND  
**THE WEST SIDE IRRIGATION DISTRICT**  
PROVIDING FOR PROJECT WATER SERVICE  
FROM DELTA DIVISION

THIS CONTRACT, made this \_\_\_\_ day of \_\_\_\_\_, 2004, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, and **THE WEST SIDE IRRIGATION DISTRICT**, hereinafter referred to as the Contractor, a public agency of the State of California, duly organized, existing, and acting pursuant to the laws thereof;

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WITNESSETH, That:

EXPLANATORY RECITALS

[1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

[2<sup>nd</sup>] WHEREAS, the United States constructed the Delta-Mendota Canal and related facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and [**Contractor specific issue w/respect to additional facilities**]

[3<sup>rd</sup>] WHEREAS, the rights to Project Water were acquired by the United States pursuant to California law for operation of the Project; and

[4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract No. **7-07-20-W0045**, as amended, which established terms for the delivery to the Contractor of Project Water from the Delta Division Facilities from **June 29, 1977** through **February 28, 1995**; and

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[5<sup>th</sup>] WHEREAS, the Contractor and the United States have pursuant to subsection

3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into

interim renewal contract(s) identified as Contract No(s). **7-07-20-W0045-IR1, 7-07-20-W0045-IR2,**

**7-07-20-W0045-IR3, 7-07-20-W0045-IR4, 7-07-20-W0045-IR5, 7-07-20-W0045-IR6, 7-07-20-**

**W0045-IR7, and 7-07-20-W0045-IR8** the current of which is hereinafter referred to as the Existing

Contract, which provided for the continued water service to the Contractor from **March 1, 1995**

**through February 28, 2006; and**

**[5.1] WHEREAS, the Contractor entered into the Agreement for Partial Assignment to the City of Tracy; and**

**[5.2] WHEREAS, the Contractor will enter into another Agreement for Additional Assignment of Project Supply to the City of Tracy; and**

[6<sup>th</sup>] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the Existing Contract following completion of appropriate environmental documentation, including a programmatic environmental impact statement (PEIS) pursuant to the National Environmental Policy Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the CVPIA and the potential renewal of all existing contracts for Project Water; and **[Contractor specific issue]**

**[6.1] Contractor Specific Issue** recognizing partial assignment of the contract to a third party or the acquisition of Project Water through assignment(s), if such acquired water is being

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covered under this Contract

[7<sup>th</sup>] WHEREAS, the United States has completed the PEIS and all other appropriate environmental review necessary to provide for long-term renewal of the Existing Contract; and

[8<sup>th</sup>] WHEREAS, the Contractor has requested the long-term renewal of the Existing Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the State of California, for water service from the Project; and

[9<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all of its obligations under the Existing Contract; and

[10<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and beneficial use and/or has demonstrated projected future demand for water use such that the Contractor has the capability<sup>1</sup> and expects to utilize fully for reasonable and beneficial use the quantity of Project Water to be made available to it pursuant to this Contract; and **[Contractor Specific]**

[11<sup>th</sup>] WHEREAS, water obtained from the Project has been relied upon by urban and agricultural areas within California for more than 50 years, and is considered by the Contractor as an

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<sup>1</sup> Contractor specific issue – This recital may need to be modified for individual contractors who do not have the capability today to take Project Water but can demonstrate that they will have the capability to take Project Water prior to the delivery of water under this contract

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essential portion of its water supply; and

[12<sup>th</sup>] WHEREAS, the economies of regions within the Project, including the Contractor's, depend upon the continued availability of water, including water service from the Project; and

[13<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships to pursue measures to improve water supply, water quality, and reliability of the Project for all Project purposes; and

[14<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a reasonable balance among competing demands for use of Project Water; and to comply with all applicable environmental statutes, all consistent with the legal obligations of the United States relative to the Project; and

[15<sup>th</sup>] WHEREAS, the parties intend by this Contract to develop a more cooperative relationship in order to achieve their mutual goals; and

[15.1] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments, rescheduling and conveyance of non-Project Water under this Contract as tools to minimize the

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impacts of Conditions of Shortage and to maximize the beneficial use of Project Water; and

[15.2] WHEREAS, the parties desire and intend that this Contract not provide a disincentive to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital immediately above; and

[16<sup>th</sup>] WHEREAS, the United States and the Contractor are willing to enter into this Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed by the parties hereto as follows:

#### DEFINITIONS

1. When used herein unless otherwise distinctly expressed, or manifestly incompatible with the intent of the parties as expressed in this Contract, the term:

(a) “Calendar Year” shall mean the period January 1 through December 31, both dates inclusive;

(b) “Charges” shall mean the payments required by Federal Reclamation law in addition to the Rates and Tiered Pricing Component specified in this Contract as determined annually by the Contracting Officer pursuant to this Contract;

(c) “Condition of Shortage” shall mean a condition respecting the Project during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract

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104 Total;<sup>2</sup>

105 (d) “Contracting Officer” shall mean the Secretary of the Interior’s duly  
106 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law or  
107 regulation;

108 (e) “Contract Total” shall mean the maximum amount of water to which the  
109 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

110 (f) “Contractor's Service Area" shall mean the area to which the Contractor is  
111 permitted to provide Project Water under this Contract as described in Exhibit “A” attached hereto,  
112 which may be modified from time to time in accordance with Article 35 of this Contract without  
113 amendment of this Contract<sup>3</sup>

114 (g) “CVPIA” shall mean the Central Valley Project Improvement Act, Title  
115 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

116 (g.1) “Delta Division Facilities” shall mean those existing and future Project  
117 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the  
118 Tracy Pumping Plant, the O’Neill Forebay, the O’Neill Pumping/Generating Plant, and the San Luis  
119 Reservoir, used to divert, store and convey water to those Project Contractors entitled to receive

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<sup>2</sup> Contractor specific/ Unit specific issue

<sup>3</sup> Contractor specific issue with respect to using legal description or service area map

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water conveyed through the Delta-Mendota Canal.

(h) "Eligible Lands" shall mean all lands to which Irrigation Water may be delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

(i) "Excess Lands" shall mean all lands in excess of the limitations contained in Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal Reclamation law;

(j) "Full Cost Rate" shall mean an annual rate, as determined by the Contracting Officer that shall amortize the expenditures for construction properly allocable to the Project irrigation or M&I functions, as appropriate, of facilities in service including all O&M deficits funded, less payments, over such periods as may be required under Federal Reclamation law, or applicable contract provisions. Interest will accrue on both the construction expenditures and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated in accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes actual operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations for



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the RRA;<sup>4</sup>

(k) “Ineligible Lands” shall mean all lands to which Irrigation Water may not be delivered in accordance with Section 204 of the RRA;

(l) “Irrigation Full Cost Water Rate” shall mean the Full Cost Rate applicable to the delivery of Irrigation Water;

(m) “Irrigation Water” shall mean water made available from the Project that is used primarily in the production of agricultural crops or livestock, including domestic use incidental thereto, and watering of livestock;

(n) “Landholder” shall mean a party that directly or indirectly owns or leases nonexempt land, as provided in 43 CFR 426.2;

(o) “Municipal and Industrial (M&I) Water”<sup>5</sup> shall mean Project Water, other than Irrigation Water, made available to the Contractor. M&I Water shall include water used for human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses) which are kept for personal enjoyment or water delivered to landholdings operated in units of less than five acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the use of

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<sup>4</sup>This definition may be an issue with M&I contractors and those with Repayment contracts pursuant to section 9(d) of the Reclamation Projects Act 1939

<sup>5</sup> Some Contractors may want to include “other water” definition in lieu of this definition.

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water delivered to any such landholding is a use described in subdivision (m) of this Article;

**[Contractor Specific]**

(p) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable to the delivery of M&I Water;

(q) "Operation and Maintenance" or "O&M" shall mean normal and reasonable care, control, operation, repair, replacement (other than capital replacement), and maintenance of Project facilities;

(r) "Operating Non-Federal Entity"<sup>6</sup> shall mean the Operating Non-Federal Entity(ies), its (their) successors or assigns, which has (have) the obligation to operate and maintain all or a portion of the Delta Division Facilities pursuant to an written agreement(s) with the United States. When this Contract was entered into, the Operating Non-Federal Entity(ies) were

\_\_\_\_\_. **[Contractor Specific]**

(s) "Project" shall mean the Central Valley Project owned by the United States and managed by the Department of the Interior, Bureau of Reclamation;

(t) "Project Contractors" shall mean all parties who have water service contracts for Project Water from the Project with the United States pursuant to Federal Reclamation law;

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<sup>6</sup> Contractor specific issue with respect to additional operating non-federal entities

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(u) “Project Water” shall mean all water that is developed, diverted, stored, or delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance with the terms and conditions of water rights acquired pursuant to California law;

(v) “Rates” shall mean the payments determined annually by the Contracting Officer in accordance with the then current applicable water ratesetting policies for the Project, as described in subdivision (a) of Article 7 of this Contract;

(w) “Recent Historic Average” shall mean the most recent five year average of the final forecast of Water Made Available to the Contractor pursuant to this Contract or its preceding contract(s);

(x) “Secretary” shall mean the Secretary of the Interior, a duly appointed successor, or an authorized representative acting pursuant to any authority of the Secretary and through any agency of the Department of the Interior;

(y) “Tiered Pricing Component” shall be the incremental amount to be paid for each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

(z) “Water Delivered” or “Delivered Water” shall mean Project Water diverted for use by the Contractor at the point(s) of delivery approved by the Contracting Officer;<sup>7</sup>

(aa) “Water Made Available” shall mean the estimated amount of Project Water

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that can be delivered to the Contractor for the upcoming Year as declared by the Contracting Officer,  
pursuant to subdivision (a) of Article 4 of this Contract;

(bb) "Water Scheduled" shall mean Project Water made available to the Contractor  
for which times and quantities for delivery have been established by the Contractor and Contracting  
Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

(cc) "Year" shall mean the period from and including March 1 of each Calendar  
Year through the last day of February of the following Calendar Year.

#### TERM OF CONTRACT

2. (a) This Contract shall be effective March 1, 200\_, through February 28, 20\_\_,  
and supercedes the Existing Contract<sup>8</sup> In the event the Contractor wishes to renew this Contract  
beyond February 28, \_\_\_\_\_, the Contractor shall submit a request for renewal in writing to the  
Contracting Officer no later than two (2) years prior to the date this Contract expires. The renewal of  
this Contract insofar as it pertains to the furnishing of Irrigation Water to the Contractor shall be  
governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it pertains to  
the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this Article.

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<sup>7</sup> Contractor specific

<sup>8</sup> Contractor specific. May need to include language regarding this contract superceding the Existing Contract, in whole or in part.

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**[Contractor Specific]**

(b) (1) Under terms and conditions of a renewal contract that are mutually agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time of contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and subject to Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to the Contractor, shall be renewed for a period of 25 years.

(2) The conditions which must be met for this Contract to be renewed are: (i) the Contractor has prepared a water conservation plan that has been determined by the Contracting Officer in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria for evaluating such plans established under Federal law; (ii) the Contractor is implementing an effective water conservation and efficiency program based on the Contractor's water conservation plan as required by Article 26 of this Contract; (iii) the Contractor is operating and maintaining all water measuring devices and implementing all water measurement methods as approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has reasonably and beneficially used the Project Water supplies made available to it and, based on projected demands, is reasonably anticipated and expects to fully utilize for reasonable and beneficial use the quantity of Project Water to be made available to it pursuant to such renewal; (v) the Contractor is complying with all terms and conditions of this Contract; and (vi) the Contractor has the physical and legal

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ability to deliver Project Water<sup>9</sup>.

(3) The terms and conditions of the renewal contract described in subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed consistent with the parties' respective legal rights and obligations, and in consideration of all relevant facts and circumstances, as those circumstances exist at the time of renewal, including, without limitation, the Contractor's need for continued delivery of Project Water; environmental conditions affected by implementation of the Contract to be renewed, and specifically changes in those conditions that occurred during the life of the Contract to be renewed; the Secretary's progress toward achieving the purposes of the CVPIA as set out in Section 3402 and in implementing the specific provisions of the CVPIA; and current and anticipated economic circumstances of the region served by the Contractor.

(c) This Contract, insofar as it pertains to the furnishing of M&I Water to the Contractor, shall be renewed for successive periods of up to forty 40 years each, which periods shall be consistent with the then-existing Reclamation-wide policy, under terms and conditions mutually agreeable to the parties and consistent with Federal and State law. **[Contractor Specific]**. The Contractor shall be afforded the opportunity to comment to the Contracting Officer on the proposed adoption and application of any revised policy applicable to the delivery of M&I Water that would limit the term of any subsequent renewal contract with the Contractor for the furnishing of M&I

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<sup>9</sup> Refer to footnote 1 with respect to contractor capability to take delivery of water

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Water to less than 40 years.

(d) The Contracting Officer shall make a determination ten years after the date of execution of this Contract, and every five years thereafter during the term of this Contract, of whether a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of the Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70 Stat 483). The Contracting Officer shall also make a determination ten years after the date of execution of this Contract and every five years thereafter during the term of this Contract of whether a conversion of the relevant portion of this Contract to a contract under subsection 9 (c)(1) of the Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of this Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956 (70 Stat. 483). The Contracting Officer anticipates that during the term of this Contract, all authorized Project construction expected to occur will have occurred, and on that basis the Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to the Contractor, and agrees further that, at any time after such allocation is made, and subject to satisfaction of the condition set out in this subdivision, this Contract shall, at the request of the Contractor, be converted to a contract under subsection 9(d) or 9 ( c)(1), whichever is applicable of the Reclamation Project Act of 1939, subject to applicable Federal law and under stated terms and

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conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for such conversion to occur shall be a determination by the Contracting Officer that, account being taken of the amount credited to return by the Contractor as provided for under Federal Reclamation law, the remaining amount of construction costs assignable for ultimate return by the Contractor can probably be repaid to the United States within the term of a contract under subsection 9(d) or 9 (c)(1), whichever is applicable. If the remaining amount of costs that are properly assignable to the Contractor cannot be determined during the term of this Contract, the Contracting Officer shall notify the Contractor, and provide the reason(s) why such a determination could not be made. Further, the Contracting Officer shall make such a determination as soon thereafter as possible so as to permit, upon request of the Contractor and satisfaction of the conditions set out above, conversion to a contract under subsection 9(d) or 9 (c)(1), whichever is applicable. In the event such determination of costs has not been made at a time which allows conversion of this Contract during the term of this Contract or the Contractor has not requested conversion of this Contract within such term, the parties shall incorporate in any subsequent renewal contract as described in subdivision (b) of this Article a provision that carries forth in substantially identical terms the provisions of this subdivision.

**WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR**<sup>10</sup>

3. (a) During each Year, consistent with all applicable State water rights, permits,



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and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this

Contract, the Contracting Officer shall make available for delivery to the Contractor \_\_\_\_\_ acre-feet

of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in accordance

with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of

this Contract.

(b) Because the capacity of the Project to deliver Project Water has been

constrained in recent years and may be constrained in the future due to many factors including

hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor

actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given

Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected that the

Contract Total set forth in this Contract will not be available to the Contractor in many years. During

the most recent five years, the Recent Historic Average of Water Made Available to the Contractor

was \_\_\_\_\_ acre-feet. Nothing in subdivision (b) of this Article shall affect the rights and obligations

of the parties under any provision of this Contract.

(c) The Contractor shall utilize the Project Water in accordance with all applicable

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<sup>10</sup> Contractors proposed conceptual language on 4/1/04 in response to Article 12 discussions. Usbr to evaluate concept.

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legal requirements.

(d) The Contractor shall make reasonable and beneficial use of all water furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted within the Contractor's Service Area which are consistent with applicable State law and result in use consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to Article 26 of this Contract; Provided, further, That such water conservation plan demonstrates sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation law. Groundwater recharge programs, groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted outside the Contractor's Service Area may be permitted upon written approval of the Contracting Officer, which approval will be based upon environmental documentation, Project Water rights, and Project operational concerns. The Contracting Officer will address such concerns in regulations, policies, or guidelines.

(e) The Contractor shall comply with requirements applicable to the Contractor in

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biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to implement. The Existing Contract, which evidences in excess of \_\_\_\_\_ years of diversions for irrigation and/or M&I purposes<sup>11</sup> of the quantities of water provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an appropriate baseline for biological assessment(s) prepared pursuant to the ESA, and any other needed environmental review. Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with respect to any biological opinion or other environmental documentation referred to in this Article.<sup>12</sup>

(f) Following the declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will make a determination whether Project Water, or other water available to the Project, can be made available to the Contractor in addition to the Contract Total under this Article during the Year without adversely impacting other Project Contractors. At the request of the Contractor, the Contracting Officer will consult with the Contractor prior to making such a determination. If the Contracting Officer determines that Project Water, or other water available to the Project, can be made available to the Contractor, the Contracting Officer will announce the availability

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<sup>11</sup> Contractor Specific Issue. The type of water diverted will be addressed on a contractor specific basis

<sup>12</sup> Specific Contract Issue. Concern over land use authority may be the subject of discussion with individual contractors.

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of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of taking such water to determine the most equitable and efficient allocation of such water. If the Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make such water available to the Contractor in accordance with applicable statutes, regulations, guidelines, and policies. Subject to existing long-term contractual commitments, water rights and operational constraints, long-term Project Contractors shall have a first right to acquire such water, including Project Water made available pursuant to Section 215 of the RRA.

(g) The Contractor may request permission to reschedule for use during the subsequent Year some or all of the Water Made Available to the Contractor during the current Year, referred to as “rescheduled water”. The Contractor may request permission to use during the current Year a quantity of Project Water which may be made available by the United States to the Contractor during the subsequent Year referred to as “preuse.” The Contracting Officer’s written approval may permit such uses in accordance with applicable statutes, regulations, guidelines, and policies.

(h) The Contractor’s right pursuant to Federal Reclamation law and applicable State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the

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term thereof and any subsequent renewal contracts, as described in Article 2 of this Contract, during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its obligations under this Contract and any renewals thereof. Nothing in the preceding sentence shall affect the Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of Article 12 of this Contract or applicable provisions of any subsequent renewal contracts.

(i) Project Water furnished to the Contractor pursuant to this Contract may be delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this Contract upon written approval by the Contracting Officer in accordance with the terms and conditions of such approval.

(j) The Contracting Officer shall make reasonable efforts to protect the water rights necessary for the Project and to provide the water available under this Contract. The Contracting Officer shall not object to participation by the Contractor, in the capacity and to the extent permitted by law, in administrative proceedings related to the Project Water rights; Provided, that the Contracting Officer retains the right to object to the substance of the Contractor's position in such a proceeding; Provided further That in such proceedings the Contracting Officer shall recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

#### TIME FOR DELIVERY OF WATER

4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall

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351 announce the Contracting Officer's expected declaration of the Water Made Available. Such  
352 declaration will be expressed in terms of both Water Made Available and the Recent Historic  
353 Average and will be updated monthly, and more frequently if necessary, based on then-current  
354 operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made  
355 Available will be made. The Contracting Officer shall provide forecasts of Project operations and the  
356 basis of the estimate, with relevant supporting information, upon the written request of the  
357 Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer  
358 shall provide the Contractor with the updated Recent Historic Average.

359 (b)<sup>13</sup> On or before each March 1 and at such other times as necessary, the Contractor  
360 shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer,  
361 showing the monthly quantities of Project Water to be delivered by the United States to the  
362 Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting  
363 Officer shall use all reasonable means to deliver Project Water according to the approved schedule  
364 for the Year commencing on such March 1.

365 (c) The Contractor shall not schedule Project Water in excess of the quantity of  
366 Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's  
367 Service Area or to sell, transfer or exchange pursuant to Article 9 of this Contract during any Year.

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(d) Subject to the conditions set forth in subdivision (a) of Article 3 of this

Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable time prior to the date(s) on which the requested change(s) is/are to be implemented.

POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this

Contract shall be delivered to the Contractor at a point or points and any additional point or points of delivery either on Project facilities or another location or locations mutually agreed to in writing by the Contracting Officer and the Contractor.

(b) The Contracting Officer, either directly or indirectly through its written agreement(s) with the Operating Non-Federal Entity(ies), shall make all reasonable efforts to maintain sufficient flows and levels of water in Project facilities to deliver Project Water to the Contractor at the point or points of delivery established pursuant to subdivision (a) of this Article.

(c) The Contractor shall deliver Irrigation Water in accordance with any

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<sup>13</sup> Contractor Specific with respect to binding agreement contractors

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applicable land classification provisions of Federal Reclamation law and the associated regulations.

The Contractor shall not deliver Project Water to land outside the Contractor's Service Area unless approved in advance by the Contracting Officer.

(d) All Water Delivered to the Contractor pursuant to this Contract shall be measured and recorded with equipment furnished, installed, operated, and maintained by the Contracting Officer either directly or indirectly through its written agreement(s) with the Operating Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting Officer, at the point or points of delivery established pursuant to subdivision (a) of this Article. Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the appropriate Operating Non-Federal Entity(ies), the accuracy of such measurements and shall take any necessary steps to adjust any errors appearing therein. For any period of time when accurate measurements have not been made, the Contracting Officer shall consult with the Contractor and the appropriate Operating Non-Federal Entity(ies), if any, prior to making a final determination of the quantity delivered for that period of time.

(e) Absent a separate contrary written agreement with the Contractor, neither the Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control, carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this Contract beyond the point or points of delivery established pursuant to subdivision (a) of this Article.



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The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such point or points of delivery; except for any damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies), with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of its officers, employees, agents, ~~or~~ and assigns including the Operating Non-Federal Entity(ies); or (iv) a malfunction of facilities owned and/or operated by the United States or the Operating Non-Federal Entity(ies).

**MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA**<sup>14</sup>

6. (a) The Contractor has established a measuring program satisfactory to the Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation purposes within the Contractor's Service Area is measured at each agricultural turnout and such water delivered for M&I purposes is measured at each M&I service connection. The water

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measuring devices or water measuring methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for installing, operating, and maintaining and repairing all such measuring devices and implementing all such water measuring methods at no cost to the United States. The Contractor shall use the information obtained from such water measuring devices or water measuring methods to ensure its proper management of the water, to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes by customer class as defined in the Contractor's water conservation plan provided for in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor from establishing and collecting any charges, assessments, or other revenues authorized by California law. The Contractor shall include a summary of all its annual surface water deliveries in the annual report described in subdivision (c) of Article 26.

(b) To the extent the information has not otherwise been provided, upon execution of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the measurement devices or water measuring methods being used or to be used to implement subdivision (a) of this Article and identifying the agricultural turnouts and the M&I service

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<sup>14</sup> Contractor specific issue which may require additional language

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connections or alternative measurement programs approved by the Contracting Officer, at which such measurement devices or water measuring methods are being used, and, if applicable, identifying the locations at which such devices and/or methods are not yet being used including a time schedule for implementation at such locations. The Contracting Officer shall advise the Contractor in writing within 60 days as to the adequacy, and necessary modifications, if any, of the measuring devices or water measuring methods identified in the Contractor's report and if the Contracting Officer does not respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days following the Contracting Officer's response, negotiate in good faith the earliest practicable date by which the Contractor shall modify said measuring devices and/or measuring methods as required by the Contracting Officer to ensure compliance with subdivision (a) of this Article.

(c) All new surface water delivery systems installed within the Contractor's Service Area after the effective date of this Contract shall also comply with the measurement provisions described in subdivision (a) of this Article.

(d) The Contractor shall inform the Contracting Officer and the State of California in writing by April 30 of each Year of the monthly volume of surface water delivered within the Contractor's Service Area during the previous Year.

(e) The Contractor shall inform the Contracting Officer and the Operating Non-

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Federal Entity on or before the 20th calendar day of each month of the quantity of Irrigation Water  
and M&I Water taken during the preceding month.

**RATES AND METHOD OF PAYMENT FOR WATER**

7. (a) The Contractor shall pay the United States as provided in this Article for all  
Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance  
with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's  
then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended,  
modified, or superceded only through a public notice and comment procedure; (ii) applicable Federal  
Reclamation law and associated rules and regulations, or policies; and (iii) other applicable  
provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfer, or  
any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer.  
The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of  
this Contract are set forth in Exhibit "B", as may be revised annually.

(b) The Contracting Officer shall notify the Contractor of the Rates, Charges, and Tiered  
Pricing Component as follows:

(1) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
provide the Contractor an estimate of the Charges for Project Water that will be applied to the period

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October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and the basis for such estimate. The Contractor shall be allowed not less than two months to review and comment on such estimates. On or before September 15 of each Calendar Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the period October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such notification shall revise Exhibit "B".

(2) Prior to October 1 of each Calendar Year, the Contracting Officer shall make available to the Contractor an estimate of the Rates and Tiered Pricing Component for Project Water for the following Year and the computations and cost allocations upon which those Rates are based. The Contractor shall be allowed not less than two months to review and comment on such computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing Component to be in effect for the upcoming Year, and such notification shall revise Exhibit "B".

(c) At the time the Contractor submits the initial schedule for the delivery of Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor shall make an advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be delivered pursuant to this Contract during the first two calendar months of the Year. Before the end

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of the first month and before the end of each calendar month thereafter, the Contractor shall make an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract during the second month immediately following. Adjustments between advance payments for Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of the following month; Provided, That any revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this Contract during any month shall be accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and until an advance payment at the Rates then in effect for such additional Project Water is made. Final adjustment between the advance payments for the Water Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no later than April 30th of the following Year, or sixty days after the delivery of Project Water rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the last day of February.

(d) The Contractor shall also make a payment in addition to the Rate(s) in

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subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the appropriate Tiered Pricing Component then in effect, before the end of the month following the month of delivery; Provided, That the Contractor may be granted an exception from the Tiered Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of payments due to the United States for Charges for the next month. Any amount to be paid for past due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20 of this Contract.

(e) The Contractor shall pay for any Water Delivered under subdivision (a), (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies; Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this Contract shall be no more than the otherwise applicable Rate for Irrigation Water or M&I Water under subdivision (a) of this Article.

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(f) Payments to be made by the Contractor to the United States under this

Contract may be paid from any revenues available to the Contractor.

(g) All revenues received by the United States from the Contractor relating to the

delivery of Project Water or the delivery of non-Project water through Project facilities shall be

allocated and applied in accordance with Federal Reclamation law and the associated rules or

regulations, and the then current Project ratesetting policies for M&I Water or Irrigation Water.

(h) The Contracting Officer shall keep its accounts pertaining to the administration

of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal

standards, so as to reflect the application of Project costs and revenues. The Contracting Officer

shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all

Project and Contractor expense allocations, the disposition of all Project and Contractor revenues,

and a summary of all water delivery information. The Contracting Officer and the Contractor shall

enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings,

reports, or information.

(i) The parties acknowledge and agree that the efficient administration of this

Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,

policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Component, and/or

for making and allocating payments, other than those set forth in this Article may be in the mutual



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best interest of the parties, it is expressly agreed that the parties may enter into agreements to modify the mechanisms, policies, and procedures for any of those purposes while this Contract is in effect without amending this Contract.

(j) (1) Beginning at such time as deliveries of Project Water in a Year exceed 80 percent of the Contract Total, then before the end of the month following the month of delivery the Contractor shall make an additional payment to the United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal one-half of the difference between the Rate established under subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. For all Water Delivered pursuant to subdivision (a) of Article 3 of this Contract which is in excess of 80 percent of the Contract Total, this increment shall be deemed to be divided between Irrigation Water and M&I Water in the same proportion as actual deliveries of each bear to the cumulative total Water Delivered. **[deletion of the last sentence or alternate language may be negotiated by individual districts.]**

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559                               (2)     Subject to the Contracting Officer's written approval, the Contractor  
560     may request and receive an exemption from such Tiered Pricing Component for Project Water  
561     delivered to produce a crop which the Contracting Officer determines will provide significant and  
562     quantifiable habitat values for waterfowl in fields where the water is used and the crops are produced;  
563     Provided, That the exemption from the Tiered Pricing Component for Irrigation Water shall apply  
564     only if such habitat values can be assured consistent with the purposes of the CVPIA through binding  
565     agreements executed with or approved by the Contracting Officer prior to use of such water.

566                               (3)     For purposes of determining the applicability of the Tiered Pricing  
567     Component pursuant to this Article, Water Delivered shall include Project Water that the Contractor  
568     transfers to others but shall not include Project Water transferred to the Contractor, nor shall it  
569     include the additional water provided to the Contractor under the provisions of subdivision (f) of  
570     Article 3 of this Contract.

571                               (k)     For the term of this Contract, Rates applied under the respective ratesetting  
572     policies will be established to recover only reimbursable O&M (including any deficits) and capital  
573     costs of the Project, as those terms are used in the then-current Project ratesetting policies, and  
574     interest, where appropriate, except in instances where a minimum Rate is applicable in accordance  
575     with the relevant Project ratesetting policy. Changes of significance in practices which implement  
576     the Contracting Officer's ratesetting policies will not be implemented until the Contracting Officer

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has provided the Contractor an opportunity to discuss the nature, need, and impact of the proposed change.

(l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted upward or downward to reflect the changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred Project Water to the transferee's point of delivery in accordance with the then applicable Project ratesetting policy. If the Contractor is receiving lower Rates and Charges because of inability to pay and is transferring Project Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project Water shall not be adjusted to reflect the Contractor's inability to pay.

(m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting Officer is authorized to adjust determinations of ability to pay every five years.

(n) With respect to the Rates for M&I Water, the Contractor asserts that it is not legally obligated to pay any Project deficits claimed by the United States to have accrued as of the date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the Contractor does not waive any legal rights or remedies that it may have with respect to such disputed issues. Notwithstanding the execution of this Contract and payments made hereunder, the Contractor may challenge in the appropriate administrative or judicial forums; (1) the existence, computation, or

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imposition of any deficit charges accruing during the term of the Existing Contract and any preceding interim renewal contracts, if applicable; (2) interest accruing on any such deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by the United States of payments made by the Contractor under its Existing Contract and any preceding interim renewal contracts if applicable; and (5) the application of such payments in the Rates. The Contracting Officer agrees that the Contractor shall be entitled to the benefit of any administrative or judicial ruling in favor of any Project M&I contractor on any of these issues, and credits for payments heretofore made, provided that the basis for such ruling is applicable to the Contractor. **[Contractor Specific]**

#### NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS<sup>15</sup>

8. The Contractor and the Contracting Officer concur that, as of the effective date of this Contract, the Contractor has no non-interest bearing O&M deficits and shall have no further liability therefore.

#### SALES, TRANSFERS, OR EXCHANGES OF WATER

9. (a) The right to receive Project Water provided for in this Contract may be sold,

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<sup>15</sup> Contractor specific.

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transferred, or exchanged to others for reasonable and beneficial uses within the State of California if such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this Contract may take place without the prior written approval of the Contracting Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be approved absent all appropriate environmental documentation, including but not limited to, documents prepared pursuant to the NEPA and ESA. Such environmental documentation should include, as appropriate, an analysis of groundwater impacts and economic and social effects, including environmental justice, of the proposed water transfers on both the transferor and transferee.

(b) In order to facilitate efficient water management by means of water transfers of the type historically carried out among Project Contractors located within the same geographical area and to allow the Contractor to participate in an accelerated water transfer program during the term of this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental documentation, including but not limited to documents prepared pursuant to NEPA and ESA, analyzing annual transfers within such geographical areas and the Contracting Officer shall determine whether such transfers comply with applicable law. Following the completion of the environmental documentation, such transfers addressed in such documentation shall be conducted with advance notice to the Contracting Officer, but shall not require prior written approval by the

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Contracting Officer. Such environmental documentation and the Contracting Officer's compliance determination shall be reviewed every five years and updated, as necessary, prior to the expiration of the then existing five year period. All subsequent environmental documentation shall include an alternative to evaluate not less than the quantity of Project Water historically transferred within the same geographical area.

(c) For a water transfer to qualify under subdivision (b) of this Article, such water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three years, for M&I use, groundwater recharge, groundwater banking, or similar groundwater activities, surface water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to established cropland, wildlife refuges, groundwater basins or M&I use; (ii) occur within a single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through existing facilities with no new construction or modifications to facilities and be between existing Project Contractors and/or the Contractor and the United States, Department of the Interior; and (v) comply with all applicable Federal, State, and local or tribal laws and requirements imposed for protection of the environment and Indian Trust Assets, as defined under Federal law.

#### APPLICATION OF PAYMENTS AND ADJUSTMENTS

10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M, capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of

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the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment at the option of the Contractor, may be credited against amounts to become due to the United States by the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have the right to the use of any of the Project Water supply provided for herein. All credits and refunds of overpayments shall be made within 30 days of the Contracting Officer obtaining direction as to how to credit or refund such overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year in which the overpayment was made.

(b) All advances for miscellaneous costs incurred for work requested by the Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs when the work has been completed. If the advances exceed the actual costs incurred, the difference will be refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will be billed for the additional costs pursuant to Article 25.

#### TEMPORARY REDUCTIONS--RETURN FLOWS

11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the requirements of Federal law and (ii) the obligations of the United States under existing contracts, or renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall make

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all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in this

Contract.

(b) The Contracting Officer or Operating Non-Federal Entity(ies) may temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far as feasible the Contracting Officer or Operating Non-Federal Entity(ies) will give the Contractor due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given; Provided, That the United States shall use its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of service after such reduction or discontinuance, and if requested by the Contractor, the United States will, if possible, deliver the quantity of Project Water which would have been delivered hereunder in the absence of such discontinuance or reduction.

(c) The United States reserves the right to all seepage and return flow water derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for the United States any right to seepage or return flow being put to reasonable and beneficial use pursuant to this



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Contract within the Contractor's Service Area<sup>16</sup> by the Contractor or those claiming by, through, or

under the Contractor.<sup>17</sup>

CONSTRAINTS ON THE AVAILABILITY OF WATER

12. (a) In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a Condition of Shortage in the quantity of water to be made available to the Contractor pursuant to this Contract. In the event the Contracting Officer determines that a Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of said determination as soon as practicable.

(b) If there is a Condition of Shortage because of errors in physical operations of the Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a) of Article 18 of this Contract, no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

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<sup>16</sup>Refer to footnote 3

<sup>17</sup> Contractor specific issue with respect to reclaimed water

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( c)<sup>18</sup> In any Year in which there may occur a Condition of Shortage for any of the reasons specified in subdivision (b) of this Article, the Contracting Officer shall apportion Irrigation Water among the Contractor and others entitled to Irrigation Water (which for purposes of this Article 12(c) only, shall include other Project Water that is subject to Irrigation Water shortage criteria) from Delta Division Facilities under long-term water service or repayment contracts as follows:

(1) The Contracting Officer shall make ~~A~~ an initial and subsequent determination ~~as necessary shall be made~~ of the total quantity of Irrigation Water estimated to be scheduled or actually scheduled under subdivision (b) of Article 4 of this Contract and under all other long-term water service or repayment contracts then in force for the delivery of Irrigation Water by the United States from Delta Division Facilities during the relevant Year, the quantity so determined being hereinafter referred to as the ~~total scheduled entitlements contractual commitments~~ **total scheduled entitlements** contractual commitments;

(2) A determination shall be made of the total quantity of Irrigation Water that is available for meeting the ~~total scheduled entitlements contractual commitments~~ **total scheduled entitlements** contractual commitments, the quantity so determined being hereinafter referred to as the available supply;

(3) The total quantity of Irrigation Water estimated to be scheduled or

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<sup>18</sup> Contractors propose rewrite. Technical session scheduled for 4/1/04. See footnote #10 at Article 3.

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actually scheduled by the Contractor during the relevant Year, under subdivision (b) of Article 4

hereof, shall be divided by the ~~total scheduled entitlements~~ ~~contractual commitments~~, the quotient

thus obtained being hereinafter referred to as the Contractor's ~~proportionate entitlement~~; and

(4) The available supply shall be multiplied by the Contractor's ~~proportionate entitlement~~ and the result shall be the quantity of Irrigation Water ~~required to be delivered~~ ~~made available~~ by the United States to the Contractor for the relevant Year ~~in accordance with the schedule developed by the Contracting Officer under subdivision (c)(1)~~, but in no event shall such amount exceed the Contract Total. In the event the Contracting Officer subsequently determines that the Contracting Officer can increase ~~or needs to decrease~~ the available supply for delivery from Delta Division Facilities to long-term water service and repayment Contractors during the relevant Year, such ~~additions or reductions to the available supply~~ ~~additional Irrigation Water~~ shall be apportioned consistent with subparagraphs (1) through (4), inclusive.

(d) Project Water furnished under this long-term renewal contract for M&I purposes will be allocated in accordance with the then existing Project M&I Water Shortage Policy. Such policy shall be amended, modified, or superceded only through a public notice and comment procedure. [Contractor Specific]

(e) By entering into this Contract, the Contractor does not waive any legal rights

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or remedies it may have to file or participate in any administrative or judicial proceeding contesting  
(i) the sufficiency of any Project M&I Water Shortage Policy adopted after the effective date of this  
Contract was promulgated; (ii) the substance of such a policy; or (iii) the applicability of such a  
policy. By agreeing to the foregoing, the Contracting Officer does not waive any legal defenses or  
remedies that it may then have to assert in such a proceeding. **[Contractor Specific]**

#### UNAVOIDABLE GROUNDWATER PERCOLATION

13. To the extent applicable, the Contractor shall not be deemed to have delivered  
Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such  
lands are irrigated with groundwater that reaches the underground strata as an unavoidable result of  
the delivery of Irrigation Water by the Contractor to Eligible Lands.

#### RULES AND REGULATIONS

14. The parties agree that the delivery of Irrigation Water or use of Federal facilities  
pursuant to this Contract is subject to Federal Reclamation law, including but not limited to the  
Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and the  
rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

#### WATER AND AIR POLLUTION CONTROL

15. The Contractor, in carrying out this Contract, shall comply with all applicable water  
and air pollution laws and regulations of the United States and the State of California, and shall  
obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

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QUALITY OF WATER<sup>19</sup>

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16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to

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this Contract shall be operated and maintained to enable the United States to deliver Project Water to

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the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act

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of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.

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3050) or other existing Federal laws. The United States is under no obligation to construct or furnish

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water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor

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pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the

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Contractor pursuant to this Contract.

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(b) The O&M of Project facilities shall be performed in such manner as is

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practicable to maintain the quality of raw water made available through such facilities at the highest

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level reasonably attainable as determined by the Contracting Officer. The Contractor shall be

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responsible for compliance with all State and Federal water quality standards applicable to surface

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and subsurface agricultural drainage discharges generated through the use of Federal or Contractor

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facilities or Project Water provided by the Contractor within the Contractor's Service Area.

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<sup>19</sup> Contractor specific.

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( c) [San Luis Unit specific issue regarding Drainage language]

WATER ACQUIRED BY THE CONTRACTOR  
OTHER THAN FROM THE UNITED STATES

17. (a) Water or water rights now owned or hereafter acquired by the Contractor other than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may be simultaneously transported through the same distribution facilities of the Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were constructed without funds made available pursuant to Federal Reclamation law, the provisions of Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation Water must be established through the certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water and non-Project water are/were constructed with funds made available pursuant to Federal Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the

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cost to the Federal Government, including interest of storing or delivering non-Project water, which for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid distribution system costs divided by the total irrigable acreage within the Contractor's Service Area. The incremental fee per acre is the mathematical result of such quotient times the interest rate determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that receives non-Project water through Federally financed or constructed facilities. The incremental fee calculation methodology will continue during the term of this Contract absent the promulgation of a contrary Reclamation-wide rule, regulation or policy adopted after the Contractor has been afforded the opportunity to review and comment on the proposed rule, regulation or policy. If such rule, regulation or policy is adopted it shall supercede this provision.

(b) Water or water rights now owned or hereafter acquired by the Contractor, other than from the United States may be stored, conveyed and/or diverted through Project facilities, subject to the completion of appropriate environmental documentation, with the approval of the Contracting Officer and the execution of any contract determined by the Contracting Officer to be necessary, consistent with the following provisions:

(1) The Contractor may introduce non-Project water into Project facilities and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands,

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subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate rate as determined by the applicable Project ratesetting policy, the RRA, and the Project use power policy, if such Project use power policy is applicable, each as amended, modified or superceded from time to time.

(2) Delivery of such non-Project water in and through Project facilities shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any other Project Contractors; or (iv) interfere with the physical maintenance of the Project facilities.

(3) Neither the United States nor the Operating Non-Federal Entity(ies) shall be responsible for control, care or distribution of the non-Project water before it is introduced into or after it is delivered from the Project facilities. The Contractor hereby releases and agrees to defend and indemnify the United States and the Operating Non-Federal Entity(ies), and their respective officers, agents, and employees, from any claim for damage to persons or property, direct or indirect, resulting from the act(s) of the Contractor, its officers, employees, agents, or assigns, in (i) extracting or diverting non-Project water from any source, or (ii) diverting such non-Project water into Project facilities.

(4) Diversion of such non-Project water into Project facilities shall be



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consistent with all applicable laws, and if involving groundwater, consistent with any applicable groundwater management plan for the area from which it was extracted.

(5) After Project purposes are met, as determined by the Contracting Officer, the United States and the Project Contractors entitled to receive Project Water through Delta Division Facilities shall share priority to utilize the remaining capacity of the facilities declared to be available by the Contracting Officer for conveyance and transportation of non-Project water prior to any such remaining capacity being made available to non-Project contractors. Other Project Contractors shall have a second priority to any remaining capacity of facilities declared to be available by the Contracting Officer for conveyance and transportation of non-Project water prior to any such remaining capacity being made available to non-Project contractors.

#### OPINIONS AND DETERMINATIONS

18. (a) Where the terms of this Contract provide for actions to be based upon the opinion or determination of either party to this Contract, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each opinion or determination by either party shall be provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to

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or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or determination implementing a specific provision of Federal law embodied in statute or regulation.

(b) The Contracting Officer shall have the right to make determinations necessary to administer this Contract that are consistent with the provisions of this Contract, the laws of the United States and of the State of California, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Contractor to the extent reasonably practicable.

#### COORDINATION AND COOPERATION

19. (a) In order to further their mutual goals and objectives, the Contracting Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and with other affected Project Contractors, in order to improve the operation and management of the Project. The communication, coordination, and cooperation regarding operations and management shall include, but not be limited to, any action which will or may materially affect the quantity or quality of Project Water supply, the allocation of Project Water supply, and Project financial matters including, but not limited to, budget issues. The communication, coordination, and cooperation provided for hereunder shall extend to all provisions of this Contract. Each party shall retain exclusive decision making authority for all actions, opinions, and determinations to be made by the respective party.

(b) Within 120 days following the effective date of this Contract, the Contractor,

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other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested Project Contractors to develop a mutually agreeable, written Project-wide process, which may be amended as necessary separate and apart from this Contract. The goal of this process shall be to provide, to the extent practicable, the means of mutual communication and interaction regarding significant decisions concerning Project operation and management on a real-time basis.

(c) In light of the factors referred to in subdivision (b) of Article 3 of this Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this intent:

(1) The Contracting Officer will, at the request of the Contractor, assist in the development of integrated resource management plans for the Contractor. Further, the Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to improve water supply, water quality, and reliability.

(2) The Secretary will, as appropriate, pursue program and project implementation and authorization in coordination with Project Contractors to improve the water supply, water quality, and reliability of the Project for all Project purposes.

(3) The Secretary will coordinate with Project Contractors and the State of California to seek improved water resource management.

(4) The Secretary will coordinate actions of agencies within the Department of the Interior that may impact the availability of water for Project purposes.

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873 (5) The Contracting Officer shall periodically, but not less than annually,  
874 hold division level meetings to discuss Project operations, division level water management  
875 activities, and other issues as appropriate.

876 (d) Without limiting the contractual obligations of the Contracting Officer under  
877 the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the  
878 Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other  
879 interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety or  
880 the physical integrity of structures or facilities.

881 **CHARGES FOR DELINQUENT PAYMENTS**

882 20. (a) The Contractor shall be subject to interest, administrative and penalty charges  
883 on delinquent installments or payments. When a payment is not received by the due date, the  
884 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.  
885 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative  
886 charge to cover additional costs of billing and processing the delinquent payment. When a payment  
887 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six  
888 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the  
889 Contractor shall pay any fees incurred for debt collection services associated with a delinquent  
890 payment.

891  
892 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in  
893 the Federal Register by the Department of the Treasury for application to overdue payments, or the  
894 interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation  
895 Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due  
896 date and remain fixed for the duration of the delinquent period.

897 (c) When a partial payment on a delinquent account is received, the amount

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received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

**EQUAL OPPORTUNITY**

21. During the performance of this Contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer

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928 and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,  
929 regulations, and orders.

930 (f) In the event of the Contractor's noncompliance with the nondiscrimination  
931 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be  
932 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible  
933 for further Government contracts in accordance with procedures authorized in said amended  
934 Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said  
935 Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided  
936 by law.

937 (g) The Contractor will include the provisions of paragraphs (a) through (g) in  
938 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
939 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such  
940 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action  
941 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a  
942 means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That  
943 in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor  
944 or vendor as a result of such direction, the Contractor may request the United States to enter into such  
945 litigation to protect the interests of the United States.

946 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

947 22. (a) The obligation of the Contractor to pay the United States as provided in this  
948 Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation  
949 may be distributed among the Contractor's water users and notwithstanding the default of individual  
950 water users in their obligations to the Contractor.

951  
952 (b) The payment of charges becoming due hereunder is a condition precedent to  
953 receiving benefits under this Contract. The United States shall not make water available to the  
954 Contractor through Project facilities during any period in which the Contractor may be in arrears in  
955 the advance payment of water rates due the United States. The Contractor shall not furnish water  
956 made available pursuant to this Contract for lands or parties which are in arrears in the advance  
957 payment of water rates levied or established by the Contractor.

958 (c) With respect to subdivision (b) of this Article, the Contractor shall have no

959 obligation to require advance payment for water rates which it levies.

960 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

961 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42  
962 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age  
963 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as  
964 well as with their respective implementing regulations and guidelines imposed by the U.S.  
965 Department of the Interior and/or Bureau of Reclamation.

966 (b) These statutes require that no person in the United States shall, on the grounds  
967 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the  
968 benefits of, or be otherwise subjected to discrimination under any program or activity receiving  
969 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor  
970 agrees to immediately take any measures necessary to implement this obligation, including  
971 permitting officials of the United States to inspect premises, programs, and documents.

972 (c) The Contractor makes this agreement in consideration of and for the purpose  
973 of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial  
974 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including  
975 installment payments after such date on account of arrangements for Federal financial assistance  
976 which were approved before such date. The Contractor recognizes and agrees that such Federal  
977 assistance will be extended in reliance on the representations and agreements made in this Article,  
978 and that the United States reserves the right to seek judicial enforcement thereof.

979

980 PRIVACY ACT COMPLIANCE

981 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the  
982 Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in  
983 maintaining Landholder acreage certification and reporting records, required to be submitted to the  
984 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96  
985 Stat. 1266), and pursuant to 43 CFR 426.18.

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(b) With respect to the application and administration of the criminal penalty provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible for maintaining the certification and reporting records referenced in (a) above are considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

(c) The Contracting Officer or a designated representative shall provide the Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior, Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information contained in the Landholder's certification and reporting records.

(d) The Contracting Officer shall designate a full-time employee of the Bureau of Reclamation to be the System Manager who shall be responsible for making decisions on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is authorized to grant requests by individuals for access to their own records.

(e) The Contractor shall forward promptly to the System Manager each proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System Manager with information and records necessary to prepare an appropriate response to the requester. These requirements do not apply to individuals seeking access to their own certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy Act as a basis for the request.

#### CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

25. In addition to all other payments to be made by the Contractor pursuant to this Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and detailed statement submitted by the Contracting Officer to the Contractor for such specific items of direct cost incurred by the United States for work requested by the Contractor associated with this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and



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1014 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in  
1015 writing in advance by the Contractor. This Article shall not apply to costs for routine contract  
1016 administration.

1017 **WATER CONSERVATION**

1018           26.     (a)     Prior to the delivery of water provided from or conveyed through Federally  
1019 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be  
1020 implementing an effective water conservation and efficiency program based on the Contractor's water  
1021 conservation plan that has been determined by the Contracting Officer to meet the conservation and  
1022 efficiency criteria for evaluating water conservation plans established under Federal law. The water  
1023 conservation and efficiency program shall contain definite water conservation objectives, appropriate  
1024 economically feasible water conservation measures, and time schedules for meeting those objectives.  
1025 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's  
1026 continued implementation of such water conservation program. In the event the Contractor's water  
1027 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of  
1028 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such  
1029 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the  
1030 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently  
1031 works with the Contracting Officer to obtain such determination at the earliest practicable date, and

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1032 thereafter the Contractor immediately begins implementing its water conservation and efficiency

1033 program in accordance with the time schedules therein.

1034 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of  
1035 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement  
1036 the Best Management Practices identified by the time frames issued by the California Urban Water  
1037 Conservation Council for such M&I Water unless any such practice is determined by the Contracting  
1038 Officer to be inappropriate for the Contractor.

1039 (c) The Contractor shall submit to the Contracting Officer a report on the status of  
1040 its implementation of the water conservation plan on the reporting dates specified in the then existing  
1041 conservation and efficiency criteria established under Federal law.

1042 (d) At 5 year intervals, the Contractor shall revise its water conservation plan to  
1043 reflect the then current conservation and efficiency criteria for evaluating water conservation plans  
1044 established under Federal law and submit such revised water management plan to the Contracting  
1045 Officer for review and evaluation. The Contracting Officer will then determine if the water  
1046 conservation plan meets Reclamation's then current conservation and efficiency criteria for  
1047 evaluating water conservation plans established under Federal law.

1048 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall  
1049 be described in the Contractor's water conservation plan.

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1050 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1051 27. Except as specifically provided in Article 17 of this Contract, the provisions of this  
1052 Contract shall not be applicable to or affect non-project water or water rights now owned or hereafter  
1053 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such  
1054 water shall not be considered Project Water under this Contract. In addition, this Contract shall not  
1055 be construed as limiting or curtailing any rights which the Contractor or any water user within the  
1056 Contractor's Service Area acquires or has available under any other contract pursuant to Federal  
1057 Reclamation law.

1058 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY<sup>20</sup>

1059 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and  
1060 responsibility for funding a portion of the costs of such O&M, have been transferred to the **San Luis**  
1061 **and Delta-Mendota Water Authority**, an Operating Non-Federal Entity by separate agreement (**8-**  
1062 **07-20-X0354**) between the United States and the Operating Non-Federal Entity **San Luis and Delta-**  
1063 **Mendota Water Authority**. That separate agreement shall not interfere with or affect the rights or  
1064 obligations of the Contractor or the United States hereunder.

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<sup>20</sup> Contractor/Unit specific. Other ONFE's may need to be referenced for each individual contractor

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1065 (b) The Contracting Officer has previously notified the Contractor in writing that  
1066 the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has  
1067 been transferred to the Operating Non-Federal Entity **San Luis and Delta-Mendota Water**  
1068 **Authority**, and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity **San**  
1069 **Luis and Delta-Mendota Water Authority**, or to any successor approved by the Contracting  
1070 Officer under the terms and conditions of the separate agreement between the United States and the  
1071 Operating Non-Federal Entity **San Luis and Delta-Mendota Water Authority** described in  
1072 subdivision (a) of this Article, all rates, charges, or assessments of any kind, including any  
1073 assessment for reserve funds, which the Operating Non-Federal Entity **San Luis and Delta-Mendota**  
1074 **Water Authority** or such successor determines, sets, or establishes for the O&M of the portion of  
1075 the Project facilities operated and maintained by the Operating Non-Federal Entity **San Luis and**  
1076 **Delta-Mendota Water Authority** or such successor. Such direct payments to the Operating Non-  
1077 Federal Entity **San Luis and Delta-Mendota Water Authority** or such successor shall not relieve  
1078 the Contractor of its obligation to pay directly to the United States the Contractor's share of the  
1079 Project Rates, Charges, and Tiered Pricing Component except to the extent the Operating Non-  
1080 Federal Entity **San Luis and Delta-Mendota Water Authority** collects payments on behalf of the  
1081 United States in accordance with the separate agreement identified in subdivision (a) of this Article.  
1082 (c) For so long as the O&M of any portion of the Project facilities serving the

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1083 Contractor is performed by the Operating Non-Federal Entity **San Luis and Delta-Mendota Water**  
1084 **Authority**, or any successor thereto, the Contracting Officer shall adjust those components of the  
1085 Rates for Water Delivered under this Contract representing the cost associated with the activity being  
1086 performed by the Operating Non-Federal Entity **San Luis and Delta-Mendota Water Authority** or  
1087 its successor.

1088 (d) In the event the O&M of the Project facilities operated and maintained by the  
1089 Operating Non-Federal Entity **San Luis and Delta-Mendota Water Authority** is re-assumed by the  
1090 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,  
1091 in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the  
1092 Rates to be paid by the Contractor for Project Water under this Contract representing the O&M costs  
1093 of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter,  
1094 in the absence of written notification from the Contracting Officer to the contrary, pay the Rates,  
1095 Charges, and Tiered Pricing Component specified in the revised Exhibit "B" directly to the United  
1096 States in compliance with Article 7 of this Contract.

1097 **[insertion of article 28.1 if needed for additional onfe's. Contractor Specific]**

1098 **CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS**

1099 29. The expenditure or advance of any money or the performance of any obligation of the  
1100 United States under this Contract shall be contingent upon appropriation or allotment of funds.  
1101 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations

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1102 under this Contract. No liability shall accrue to the United States in case funds are not appropriated  
1103 or allotted.

1104 BOOKS, RECORDS, AND REPORTS

1105 30. (a) The Contractor shall establish and maintain accounts and other books and  
1106 records pertaining to administration of the terms and conditions of this Contract, including: the  
1107 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;  
1108 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other  
1109 matters that the Contracting Officer may require. Reports thereon shall be furnished to the  
1110 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.  
1111 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right  
1112 during office hours to examine and make copies of the other party's books and records relating to  
1113 matters covered by this Contract.

1114  
1115 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,  
1116 records, or other information shall be requested from the Contractor by the Contracting Officer unless  
1117 such books, records, or information are reasonably related to the administration or performance of  
1118 this Contract. Any such request shall allow the Contractor a reasonable period of time within which  
1119 to provide the requested books, records, or information.

1120 (c) At such time as the Contractor provides information to the Contracting Officer  
1121 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the  
1122 Operating Non-Federal Entity.

1123 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1124 31. (a) The provisions of this Contract shall apply to and bind the successors and  
1125 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest

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therein shall be valid until approved in writing by the Contracting Officer.

(b) The assignment of any right or interest in this Contract by either party shall not interfere with the rights or obligations of the other party to this Contract absent the written concurrence of said other party.

(c) The Contracting Officer shall not unreasonably condition or withhold approval of any proposed assignment.

#### SEVERABILITY

32. In the event that a person or entity who is neither (i) a party to a Project contract, nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an association or other form of organization whose primary function is to represent parties to Project contracts, brings an action in a court of competent jurisdiction challenging the legality or enforceability of a provision included in this Contract and said person, entity, association, or organization obtains a final court decision holding that such provision is legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court decision identify by mutual agreement the provisions in this Contract which must be revised and (ii) within 3 months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the parties. Pending the completion of the actions

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designated above, to the extent it can do so without violating any applicable provisions of law, the United States shall continue to make the quantities of Project Water specified in this Contract available to the Contractor pursuant to the provisions of this Contract which were not found to be legally invalid or unenforceable in the final court decision.

#### RESOLUTION OF DISPUTES

33. Should any dispute arise concerning any provisions of this Contract, or the parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring any matter to the Department of Justice, the party shall provide to the other party 30 days' written notice of the intent to take such action; Provided, That such notice shall not be required where a delay in commencing an action would prejudice the interests of the party that intends to file suit. During the 30 day notice period, the Contractor and the Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or abridge any right or remedy that the Contractor or the United States may have.

#### OFFICIALS NOT TO BENEFIT

34. No Member of or Delegate to Congress, Resident Commissioner, or official of the Contractor shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

#### CHANGES IN CONTRACTOR'S SERVICE AREA



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1164           35.     (a)     While this Contract is in effect, no change may be made in the Contractor's  
1165 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,  
1166 except upon the Contracting Officer's written consent.

1167                   (b)     Within 30 days of receipt of a request for such a change, the Contracting  
1168 Officer will notify the Contractor of any additional information required by the Contracting Officer  
1169 for processing said request, and both parties will meet to establish a mutually agreeable schedule for  
1170 timely completion of the process. Such process will analyze whether the proposed change is likely  
1171 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of  
1172 the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-  
1173 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project  
1174 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with  
1175 the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting  
1176 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

1177                                   FEDERAL LAWS

1178           36.     By entering into this Contract, the Contractor does not waive its rights to contest the  
1179 validity or application in connection with the performance of the terms and conditions of this  
1180 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the  
1181 terms and conditions of this Contract unless and until relief from application of such Federal law or

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**Delta Division**

**R.O. Delta Division 11/15-2000**

**Contract No. 7-07-20-W0045-LTR1**

1182 regulation to the implementing provision of the Contract is granted by a court of competent

1183 jurisdiction.

1184 NOTICES

1185 37. Any notice, demand, or request authorized or required by this Contract shall be  
1186 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered  
1187 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, CA 93721, and on  
1188 behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of  
1189 **The West side Irrigation District, P.O. Box 177, Tracy CA 95378-0177.** The designation of the  
1190 addressee or the address may be changed by notice given in the same manner as provided in this  
1191 Article for other notices.

1192 CONFIRMATION OF CONTRACT<sup>21</sup>

1193 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a  
1194 decree of a court of competent jurisdiction of the State of California, confirming the execution of this  
1195 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the  
1196 validation proceedings, and all pertinent supporting records of the court approving and confirming  
1197 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1198 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and  
1199 year first above written.

1200 THE UNITED STATES OF AMERICA

1201 By: \_\_\_\_\_  
1202 Regional Director, Mid-Pacific Region  
1203 Bureau of Reclamation

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<sup>21</sup> Contractor Specific

**T.O. Draft 4-19-2004**  
**R.O. Draft 3/25-2004**  
**R. O. Draft 3/23-2004**  
**R.O. Draft 2/20-2004**  
**R.O. Draft 7/24-2003**

**R.O.Draft 6/26-2003;CVP Wide Form 5/23/03;2/13/04;3/18/04**

**Delta Division**

**R.O. Delta Division 11/15-2000**  
**Contract No. 7-07-20-W0045-LTR1**

**THE WEST SIDE IRRIGATION DISTRICT**

1204  
1205

By:\_\_\_\_\_  
President of the Board of Directors

1206    Attest:

1207    By:\_\_\_\_\_  
1208    Secretary of the Board of Directors

**R.O. Draft 11/01-2000**  
**CVP-Wide Form 11-05**  
**Delta Division**  
**R.O. Delta Division 11/15-2000**  
**Contract No.\_\_\_\_\_ - LTR1**

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**EXHIBIT A**  
[Map or Description of Service Area]

**R.O. Draft 11/01-2000**  
**CVP-Wide Form 11-05**  
**Delta Division**  
**R.O. Delta Division 11/15-2000**  
**Contract No.\_\_\_\_\_ - LTR1**

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**EXHIBIT B**  
[Initial Rates and Charges]

(I:\1113DeltaDivision.wpd)